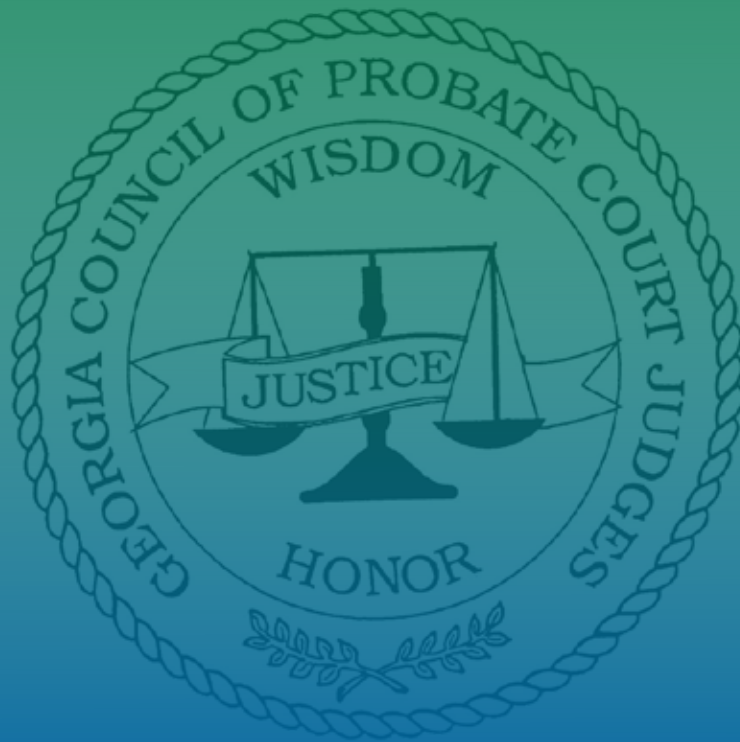


The Official Newsletter
of the Georgia Council
of Probate Court Judges

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The Gavel

Probate News



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Table of Contents

Message from the President	2
From the Editor.....	3
Save the Dates!.....	3
New Probate Judges	4
New Project Coordinator	5
Welcome New State Registrar and Director.....	5
Order to Apprehend Law	7
Traffic Violations Bureaus Reform	8
Budget Requests of Judicial Council	10
Fish and Game Law.....	14
Honoring Judge Ogletree.....	15
COAG Officer of the Year	16
Mental Health News.....	16
Is There Such a Thing as a Legal Name?.....	17
Magistrate Council Free Forms Generator and Public Access to the Courts.....	18
Judicial Ethics.....	19
The End is Near!	20
Professionalism for Judges.....	21
The Probate Court Rules and Forms Committee Update for 2015	23
Petition to Probate Will in Common Form	25
Petition to Probate Will in Solemn Form	26
Petition to Probate Will in Solemn Form and for Letters of Administration With Will Annexed	27
Petition For Letters of Testamentary Guardianship	28
Training Council Doings and Going-Ons.....	29
In Our Prayers	30

Judges,

I hope this finds you having a great start to your New Year. I wanted to take this opportunity to provide everyone with a quick update on Council happenings:

New Judges Lunch: At Oakwood Café in Atlanta, the Council hosted our newly elected and appointed probate judges for lunch and an orientation of sorts about what the Council has to offer and how we can serve them in their capacity. We have around a dozen new judges and with new judges orientation provided by ICJE still two years away, your Council felt the need to reach out to our new judges and their mentors and get everyone together for a face to face lunch. Judge Sarah Harris and others developed on information about the Council and the resources available to them. Committee Chairs attended to outline what their committee does and how they help the new judges as well. It was a very successful event!

Legislative Day: On Wednesday, January 28, our Council will host its first ever Legislative Day at the Capitol. We are still looking at options for transportation or hotel accommodations depending on the RSVP response. Our goal is to have 60 judges present for this important event. I would like to ask that you to email Erin, erin.oakley@georgiacourts.gov, and RSVP if you not have already done so. We request that you contact your legislators and let them know the probate judges will be at the Capitol on January 28 and to please join us for lunch. Look for final details from us soon. Stay tuned.....

Audit of AOC and Trial Court Councils: I stated in a previous email, I think it is important to remember that the House Appropriations Committee is the entity that requested the audit, in part to our repeated request for an Executive Director. I also think it is too early to tell what will be the end of result of the audit, which is something our legislative team will have to be listening out for this upcoming session. I don't know if an overhaul of our structure will be on the agenda considering the Governor has already set the tone for his 2015 Agenda (Education Funding Formula, Transportation/ Fuel Taxes, and Private Probation Reform). Since the audit does not recommend a full time staff member for our Council and the AOC has allowed Erin to dedicate half of her time to our Council (and is doing a remarkable job like LaShawn has in the past) we will not pursue our request for an Executive Director from the General Assembly this session.

Vital Records: As Judge McCoy has mentioned in a previous email, Vital Records will be "inspecting" county custodians around the state in the coming months to ensure compliance and etc. In an effort to ensure compliance on our part, we are working with the new State Director, Donna Moore, to provide for regional training for our probate judges who also serve as Vital Records Custodian. Ms. Moore was gracious enough to meet with the officers of your Council in Atlanta two weeks ago where she laid out her vision and concerns and we did the same. A result of that meeting is the upcoming training that Judge Don Wilkes and Judge Keith Wood will be putting together with Vital Records.

Judicial Cannons: Comments on the Draft Revised Code of Judicial Conduct, were due to Mr. Reeves by January 12. I would again like to thank Judge Betty Cason for continued work on this committee.

Caseload Reporting: I know several of you had concerns, as did I, about the new format that was being required from AOC Research. The Caseload Reporting Committee has been working diligently with AOC Research about our concerns and it appears the new form will not be used this year and more and consideration is needed to prepare a report that adequately reflects our caseload. Please stay tuned as more information on caseload reporting for 2014 will be forthcoming to you from our Committee.

Judge L. Chase Daughtrey
President, CPCJ



Dear Judges,

With Christmas behind us and a New Year started, I want to extend New Year's wishes to all of you.

The Christmas wreaths came down from our Courthouse here this week causing me to reflect on how fast this year has gone by. I'm also reminded of the reasons to be thankful and of blessings to count. I am especially grateful for being part of this Council; this family of judges.

So many of you contributed articles to this issue! I am truly impressed by the many talents we have among us. Thank you for allowing me to serve with you.

Respectfully yours,
Tony Thompson
Judge, Candler County Probate Court



Save the Dates!

January 28, 2015

Probate Judge Day
State Capitol
Atlanta, GA



February 24-25

COAG Winter Conference
Courtyard by Marriott
Decatur, GA



March 24-26

CPCJ Spring Conference
UGA Hotel and Conference
Athens, GA





Welcome New Probate Judges

Catoosa County Welcomes New Judge

Judge Jeff Hullender of Catoosa County Probate Court was elected on November 4, 2014 in a special election among four candidates to succeed the late Judge Gene Lowery. He won without a run-off. A graduate of Ringgold High in 1983 he brings a background in Business, Finance and Insurance to the bench. He is married to Donna Denise Wright. They met while he sang professionally with the Gospel group "Gold City" from Dahlonega. They raised two children, Justin and Emily, who are now adults. His musical interests are shared with his children and together they sing and produce music under the name of The Hullender Family. His other hobby is golf. He is excited and honored to be chosen to serve the people of Catoosa County.

Dodge County Welcomes New Judge

Following the resignation of Judge John Kelly in March, voters in Dodge County elected Al McCranie to succeed him in a November run-off election. McCranie is a native of Dodge County who brings an extensive government and legal background to the post. After graduating from Georgia College at Milledgeville in 1989, he then graduated from Atlanta Law School. He worked first as a Department of Corrections Probation

Officer. Later he served as a clerk with the Fulton County State Court before running his own title search business. More recently he worked for Dodge County as Administrator of the Dodge County Law Enforcement Center. He is married to Candi (McDaniel) McCranie and they have four children Caymon, Payton and twins Jeff and Gabe. His hobbies include hunting and fishing and maintaining his family farm.

Harris County Welcomes New Judge

Singer-songwriter Allen Levi won the November election to take the Harris County seat vacated by Judge Martha Hartley.

Judge Hartley resigned in time to have the special election placed on the General Election ballot in November and avoid a special election. Judge Hartley served since 1998.

Hartley, who just turned 67, said the timing was right for her to retire. "It's time," she said. "I recently had a birthday, and I have thoroughly enjoyed the privilege of doing this job. But it's just time."

"I ran for the office in 1998, which was a mid-term election," said Hartley. "Martha Chewning had resigned halfway through her term. I guess history is repeating itself."

Levi, 58, has undergraduate and law degrees from the University of Georgia and practiced in Columbus for 13 years before becoming a full-time singer-songwriter in 1996. When he left the law firm of Denney, Pease, Allison, Kirk and Lomax, he was primarily doing civil litigation and adoption work.

Hart County Welcomes New Judge

Judge Merry Pilgrim Kirk of Hart County Probate Court was elected on December 2 in a run-off against attorney Todd C. Townsend. The run-off was necessary when there was not a clear cut winner in the first special election held on November 4 among five candidates vying for the seat. She enjoys camping and spending time with family. She and her husband Kevin Kirk have been married 25 years. They have three daughters, Brittany, Kristen and Elizabeth. She is a native of Hart County. She served for 9 and a half years under Judge Smith.

Wheeler County Welcomes New Judge

In a special election in Wheeler County, Jolinda Harrelson has been elected Probate/Magistrate Judge to succeed Judge Roy Braswell who retired. Judge Braswell had served since January 1993. Jolinda "Jody" Harrelson was born in Albany, Georgia and was raised in Wheeler County. Together, Jody and her late husband Bradley Harrelson have raised four children. She reports that "All of them have been a source of great support throughout her career."

Judge Harrelson says she "Enjoys serving the people of Wheeler County and has been with the Wheeler County Probate and Magistrate Court for over six years." She began as a part time Clerk in 2007 and became Chief Magistrate Clerk in 2012. In August, 2014, she began serving as interim Probate Judge after the retirement of Judge Roy Braswell.

As the new Probate/Magistrate Judge, Jody looks forward to continuing to serve the citizens of Wheeler County and working with her new colleagues.

Welcome Erin Oakley to the AOC/ Probate Judges Project Coordinator

Erin Oakley is the newest staff member with the Judicial Council/AOC Office of Governmental and Trial Court Liaison and will be working closely with the Council of Probate Court Judges as a Project Coordinator and trial court liaison. Prior to this position, Erin worked with the Judicial Council and its director, administering Council operations and supporting all JC/AOC staff. From 2010-2011, Erin served on staff with the Georgia Commission on Family Violence, monitoring and certifying Georgia's Family Violence Intervention Programs.

Erin staffs the Judicial Council Strategic Plan Implementation Committee and its Access, Fairness, and Public Trust and Confidence Committee. Erin graduated from Berry College in Northwest Georgia and calls Midtown Atlanta her home.



Welcome: New State Registrar & Director of the State Office of Vital Records Donna Moore

The Georgia Department of Public Health (DPH) has named Donna Moore as the new State Registrar to oversee the operations of the agency's vital records organization. Ms. Moore, with 25 years of management and leadership experience in the private sector, was selected as part of a four-month national search and began her new role on August 1. She earned a Master of Business Administration degree at Mercer University and a Bachelor of Business degree at the University of Georgia. According to DPH Commissioner Dr. Brenda Fitzgerald, "Donna's rich experience ranging from public utilities to healthcare uniquely qualifies her to take our vital records operations to a new level."

Recently, Donna took time to talk with our own President-Elect, Don Wilkes, about her new role.

Don: What do you like most about your new role?

Donna: I love the people. I really do. We have some great employees at the State Office and some great local partners who really enjoy taking care of and serving customers. In the past, we've made it hard for our employees to run a "great" operation at the State Office because they were following antiquated processes and policies. I'm here to help change that by taking a hard look at the way we do business and by leveraging technology and innovative practices. And, then taking it a step further and working with partners such as probate judges to make sure they have what they need to be great locally.

Don: What is your vision for the State Office and the vital records organization?

Donna: It's really two-fold. First, I want the State Office to embrace its role as the custodian of data and information. At the core of our mission is our role as "data manager;" we provide data that is foundational for all of the Department of Public Health programs that serve Georgia. Programs such as Chronic Disease Prevention, Maternal and Child Health, and WIC are dependent on our data to guide their strategies and approaches to serving the citizens of our state. Secondly, I want the State Office to embrace its role as the leader for the local county registrar offices in terms of providing guidance through policies and procedures, offering assistance for complicated cases or issues, and setting best practices in place across our state. My sense is we had 159 local county registrars each doing the best job they knew how to do but with little guidance and direction from the State Office. I have heard that the local registrars are eager for me to give them the tools they need to be successful - whether

Welcome New State Registrar and Director cont.

it is in the form of a new policy, an improved procedure, or a best practice. I would love to be able to uncover a best practice in Emanuel County that we can leverage across the other 158 counties!

Don: Come on down - We've got best practices! But how are you going to make that happen?

Donna: One of my strategies for leveraging best practices is instituting a new role known as the "regional consultant." I now have four employees who serve as regional consultants, each with a specific geographic territory, covering the state. These four individuals have been charged with working across the state, and specifically with county offices, to ensure the local operation is healthy, to be a resource, and to uncover and leverage best practices. I'm excited about having these folks in the field working with and serving local registrars.

Don: What is the hardest thing you've had to do in your short tenure as State Registrar?

Donna: Probably the hardest thing I've had to do so far is dealing with the possibility of removing a local county registrar from our system and relieving them of their duties. A registrar who also happened to be a probate judge. The local operation was not following key policies or procedures. It has proven to be a hard and unpleasant task, but necessary. I am very conscious of the responsibility to maintain our vital records system to the highest standard. As I take on this role as State Registrar, I think it is important that I never lose sight of the fact that I am the custodian of every vital record in the state of Georgia. It's a humbling responsibility. I am a custodian. Local offices are custodians. We are here to serve Georgians as keepers and protectors of their vital event records from fraud, from abuse, from lackadaisical practices.

Don: What do you want our probate judges, who serve as local registrars, to know?

Donna: I want them to know that I look forward to working with them and improving our vital records operation together. Transformation is coming. I want them to know that they are 159 new friends I just haven't met yet. That I'm committed to their success as local registrars and that I will do everything in my power to help them have an efficient and effective vital records operation that helps them do their job serving customers. I want them to know that I perceive them as an extension of the State Office and, as an extension, that we are all held to the same governance and standards of practice. I want them to know that I'm approachable and that I answer emails. That I even answer my own phone when I'm in my office! I want them to know that I like being called "Donna" rather than Ms. Moore and that I like calling you "Don" rather than Judge Wilkes.

Don: Can you share some life experiences or insights into who you are?

Donna: I am the daughter of a soldier who spent his entire career in the Army and an Atlanta-native mother whose ancestors are one of the founding families of Henry County. I grew up on military bases in Germany and Japan and went to high school at Nurnberg American High School. I spent my formative years living in different countries, learning to appreciate cultural differences in people, and growing up with a very strong sense of patriotism. I think my upbringing and exposure to positive role models influenced my love of teamwork and an affinity for leadership roles that serve others. Nothing is more satisfying to me, as a leader, than seeing someone on my team achieve success.



Judicial Council of Georgia

Administrative Office of the Courts

Chief Justice Hugh P. Thompson
Chair

Marla S. Moore
Director

Order to Apprehend Law (O.C.G.A. § 24-12-21)

The Judicial Council supports legislation to exempt probate courts from the processes under O.C.G.A. § 24-12-21 in connection with the procedure under O.C.G.A. § 37-3-41.

The Council of Probate Court Judges seeks to amend O.C.G.A. § 24-12-21 to exempt probate courts from the processes in this Code Section for authority to disclose AIDS confidential information related to an order to apprehend a person needing a mental health evaluation under O.C.G.A. § 37-3-41.

Pursuant to O.C.G.A. § 37-3-41, a probate court may issue an order to apprehend and transport a person to an emergency receiving facility upon the affidavits of at least two persons who attest that they have seen the person within the last forty-eight hours and that the person is believed to be mentally ill and requiring involuntary treatment. The probate court order expires in seven days.

The AIDS information may be stated in the affidavits supporting the grant of an order, but the process under O.C.G.A. § 24-12-21 to authorize the disclosure of this information takes at least two days, usually longer, to complete. The present process greatly impedes the time sensitive procedure under O.C.G.A. § 37-3-41 and results in potential harmful delay to the person alleged to be in need of a mental health evaluation and to the community.

This amendment would afford all parties the ability to comply with the time requirements of O.C.G.A. § 37-3-41, to take necessary precautions, and to ensure public safety.

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Traffic Violations Bureaus Reform (O.C.G.A. §§ 40-13-50 through 40-13-66)

The Judicial Council supports reform of the traffic violations statutes.

The traffic violations bureau statutes were enacted in the 1960s. Since that time, court processes have advanced significantly and appellate court decisions have overruled provisions that are central to the functioning of the traffic violations bureau processing of traffic offenses. The reform proposal is intended to eliminate the formation of a “bureau,” and instead focus on the flexibility and efficiency of processing traffic citations. This reduces the burdens on both the court and those accused of minor traffic violations.

This proposal allows each court having jurisdiction over violations of traffic laws or traffic ordinances to customize the procedures for the summary disposition of minor traffic offenses to its own best practices. Additionally, this reform addresses the constitutional problems cited in appellate opinions, modernizes forty-year old statutes, and specifically authorizes online payment of appearance bonds.

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State Tax Refund Offset for Delinquent Court Fines/Fees

The Judicial Council supports legislation that authorizes debt collection from state income tax refunds for unpaid fines and fees owed to the courts.

The AOC is collaborating with the Association County Commissioners of Georgia (“ACCG”) to develop a process by which delinquent court fines and fees can be deducted from state income tax refunds. Courts in other states have had great success with tax refund intercept programs (“TRIPs”). Georgia law already allows eight state agencies to collect debts owed to them by requesting the Department of Revenue collect the amount owed from state tax refunds.

The legislation being developed by the AOC and ACCG would allow local courts to utilize a local government clearinghouse for the submission of debts to the Department of Revenue. This has been a successful method of implementation in North and South Carolina, where the clearinghouse keeps the additional workload of their revenue departments to a minimum.

The legislation sets forth the following tax refund intercept process:

- Courts submit unpaid fine and fee data for debts greater than \$50.00 to a local government clearinghouse.
- The clearinghouse submits the data to the Georgia Department of Revenue.
- The Department of Revenue matches unpaid fine data to the taxpayer/offender who is owed a refund.
- The Department of Revenue deducts the unpaid fine/fees, and its own costs, from the tax refund amount, and sends the amount owed the courts to the clearinghouse.
- The clearinghouse remits the net fine/fees to the requesting courts.

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Court Technology Funding

The Judicial Council supports a general law creating a new process for authorizing limited court technology user fees.

For the past several years, local bills have been filed each legislative session seeking to allow individual courts to impose a technology fee on civil and/or criminal filings. Some local bills that have sought court technology fees have failed, but twenty or more are already law. The amount of the technology fees sought has ranged from \$5.00 to \$15.00 per filing. Pursuing local legislation is an uncertain process at best.

Information technology is vital to the provision of court services. The purpose of this proposal is to streamline the authorization process and give courts and political subdivisions the option to provide for the planned and sustained development of court technology resources through the adoption of a limited user fee. Court officials and political subdivisions would be authorized by the legislation to work together to develop information technologies and services that enable the court community to improve its efficiency and assist the public in accessing and utilizing court services.

The benefits of a general law allowing local courts to enact technology fees include:

- resolving concerns that piecemeal implementation of court technology fees is not in keeping with the Georgia constitution's uniformity requirements (Ga. Const. Art. VI, § I, Para. V);
- providing a consistent process for planning and adoption by any court with the agreement of the local governing authorities;
- establishing a foundation for steady investment into court infrastructure; and
- requiring accountability for the funds collected and expended.

The Judicial Council supports court technology funding legislation that:

- Allows all classes of trial courts to implement a technology user fee up to \$5.00 on both civil filings and criminal fines that would expire once the plan has been implemented;
- Requires development of a court technology plan and approval of the plan by the local governing authority;
- Sets forth uniform permitted uses for which technology funds may be spent; and
- Requires an annual audit of technology fee funds by the county or municipality whose court clerk maintains the account holding the funds.

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House Bill 438: Alternative Dispute Resolution Program Filing Fee Increase

The Judicial Council supports HB 438, which amends O.C.G.A. § 15-23-7 to increase the maximum filing fee that may be charged and collected by local programs to support court- connected or court-referred alternative dispute resolution (ADR) programs from \$7.50 to \$10 per civil filing.

Local ADR programs are essential to the efficient operations of a court, as the tens of thousands of cases each year that are settled through the ADR system avoid the time and expense required for trial. There are currently 43 active ADR programs in the state, offering some form of ADR services in 121 of Georgia's 159 counties. An average of 20,000 cases is settled through the ADR system each year.

The Georgia Court-Connected Alternative Dispute (ADR) Resolution Act¹ of 1993 ("Act") provided a statutory maximum fee of \$7.50 per civil filing. This maximum has remained unchanged since that time. The Rules provided by the Act allow local ADR boards flexibility to tailor their programs to best meet the needs of the local judiciary, bar and litigants. Therefore, the structure of the programs vary greatly, including the amount of the fee, what the fee revenue is budgeted for, other revenue sources, and local mediator roster requirements.

As an effect of the economic downturn of 2008, many ADR programs face dire financial situations and possible insolvency. Programs established at or around the time of the Act may have received implementation funding awarded through the Georgia Office of Dispute Resolution,² and also may have built up reserves in the years prior to the economic downturn. Newer programs likely were not established with implementation funding and have little to no reserves on which to operate or plan for long-term solvency.³

Of the 43 programs in the system, 21 provided information on caseloads and revenue for their local Fiscal Year 2012.⁴ Concurrently, caseload data for calendar years 2011 and 2012 as reported to the Administrative Office of the Courts was analyzed. The findings include:

- Of the 21 programs surveyed, eight are currently charging the statutory maximum of \$7.50; one program has separate fees by court level, and the remaining programs have filing fees at various amounts up to \$7.50.
- There does not appear to be any type of correlation among those programs with a \$7.50 filing fee. There are large programs with filing fees well below \$7.50, while some smaller programs charge \$7.00 and above.
- The lowest filing fee currently being collected is \$3.00.

House Bill 438 cont.

- Eighteen programs experienced a decline in revenue between 2011 and 2012. The combined revenue decline among those programs was \$387,261.00.

This bill does not mandate a fee increase; discretion remains with the local programs. Some programs may not intend to increase their fee at this time, but there are others for which an increase would provide the revenue necessary to continue serving the courts and citizens of Georgia.

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¹ O.C.G.A. § 15-23-1 through 15-23-12

² Funding administered by the Georgia Office of Dispute Resolution, through a grant from the Georgia Bar Foundation.

³ Funding from the Georgia Bar Foundation was curtailed several years prior to the economic downturn.

⁴ These programs receive revenue from the filing fee in superior, state, magistrate and probate courts in their jurisdiction; per statute, juvenile courts do not collect ADR fees.





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Increased Contempt Penalties in Magistrate Court (O.C.G.A. § 15-10-2)

The Judicial Council supports legislation allowing the penalty for contempt in magistrate courts to be increased to fines not exceeding \$500, by imprisonment not exceeding twenty days, or both.

The Council of Magistrate Court Judges supports legislation to raise the maximum fine for contempt in magistrate courts from \$200 to \$500, and the maximum imprisonment changed from ten to twenty days. This change would make the contempt penalty in magistrate court consistent with other courts that do not hold jury trials.

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Fish and Game Law (O.C.G.A. § 15-9-30.3)

The Judicial Council supports legislation to clean up contradictory language and to clarify jurisdiction of the probate courts as it applies to Fish and Game violations.

The Council of Probate Court Judges seeks to amend O.C.G.A. § 15-9-30.3 to clean up contradictory language and to clarify jurisdiction of the probate courts as it applies to Fish and Game violations.

O.C.G.A. § 15-9-30.3(a)(2) states that probate courts cannot hear any violation of Hunting Deer at Night with Aid of Light, however, O.C.G.A. § 27-3-48 states the probate courts can hear violations of Hunting Deer at Night without Aid of Light. O.C.G.A. § 15-9-30.3(a)(1) states that probate courts cannot hear violations that are high and aggravated in nature, which includes all baiting offenses. The Georgia Department of Natural Resources Law Enforcement Division has historically filed these offenses with the probate courts. Probate courts currently have concurrent jurisdiction over these violations with state and superior courts, and this change would not affect or impede the jurisdiction of those courts.

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FOR IMMEDIATE RELEASE

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**Hon. LaVerne Ogletree of Georgia Completes
Traffic Issues in the 21st Century at The National Judicial College**

RENO, NV – The National Judicial College (NJC) is pleased to announce that the Hon. LaVerne Ogletree of the Greene County Probate Court in Greensboro, Georgia, has completed Traffic Issues in the 21st Century, October 6-9, 2014, at The National Judicial College in Reno, Nevada.

Judges are facing more complex traffic issues as the law and technology progress. This course is designed to provide an overview of current traffic laws and technological trends and their applications to the judiciary.

The National Judicial College was founded in 1963 and is the nation's leading provider of judicial education. The NJC is housed in a state-of-the-art building on the historic 255-acre campus of the University of Nevada, Reno. For over 50 years, the NJC has been offering courses to improve judicial productivity, challenge current perceptions of justice and inspire judges to achieve judicial excellence. With courses held onsite, across the nation and around the world, the NJC offers an average of 90 courses annually with more than 4,000 judges enrolling from all 50 states, U.S. territories and more than 150 countries.

The NJC and the National Council of Juvenile and Family Court Judges assisted the University of Nevada, Reno, in developing one of the nation's first master's and Ph.D. in judicial studies programs. Both programs provide a formal academic setting in which trial judges can integrate technical and academic studies to attain an intellectual understanding of the American judiciary.

The NJC is also home to the National Tribal Judicial Center and an International Program. The College's curricula include a Seminar Series, made up of courses that provide judges the opportunity to study diverse and interesting topics at historically and culturally rich locations across the United States. Web-based courses are also offered enabling participants to explore a variety of subject areas online.

The National Judicial College has an appointed 18-member Board of Trustees and became a Nevada not-for-profit (501)(c)(3) educational corporation on January 1, 1978. Please visit the NJC website at www.judges.org for NJC news, ways to donate, course information and more. Or, call (800) 25-JUDGE for more information.

###

Outgoing GCPCJ President Judge Kelley Powell named COAG Officer of the Year

Judge Tony Thompson

On October 14, 2014, at the Constitutional Officers Association of Georgia's fall conference in Savannah, Judge Kelley Powell of Henry County was awarded the prestigious honor of COAG Officer of the Year.

The other nominees included Superior Court Clerk Caroline Williams of Pike County, Sheriff Al St. Lawrence of Chatham County, Tax Commissioner Todd Cowan of Douglas County, Superior Court Clerk Tim Harper of Banks County, and Tax Commissioner Kevin Payne of Floyd County.

Judge Powell had just ended a term serving as President of the Georgia Council of Probate Court Judges among her other many duties.



The announcement was met with a standing ovation. The shared affection and sentiment of Georgia's Council of Probate Court Judges for Judge Powell was perhaps best articulated by Judge Lynwood Jordan who said, "In my mind, you deserve this award because over these many years you have been: (1) promoting judicial competence and knowledge through education, which has included many interchanges of ideas and experiences; (2) serving without expectation of reward; and, (3) recognizing what being a 'judge' means, and converting that recognition into solid judicial training and legislative initiatives. You are most deserving of today's COAG award. Thank you, Judge Powell."

Mental Health News

Judge Susan Tate

Another mental health training/collaborative meeting was held in Macon, GA, on November 14 at the invitation of Judge Sarah Harris, Probate Court of Bibb County. The law firm of James-Bates-Brannan-Groover-LLP graciously offered the use of their conference room for the day. The participants in this training differed from those in previous ones in that several attorneys and a psychiatrist attended, along with several other mental health clinicians, social workers, case managers, Judge Harris and two members of her staff. The discussion was lively. Everyone asked good questions and offered thought-provoking observations. An agreement was reached for the group to meet again, perhaps even on a regular basis for a while, in order to continue the dialogue and to work out some of the kinks in their system. It was apparent that Judge Harris had already begun that process in the time she has been in office. Seeing tangible results of what an involved judge can accomplish in pulling the right players together is an encouraging thing to witness.

This past week, the Carter Center held its 30th Annual Mental Health Symposium on November 20-21. Experts from all over the country attended and/or presented, representing various fields including mental health and substance use disorder treatment, psychiatry, research, journalism, advocacy, housing, supported employment, and others. It is always exciting to hear people engaged in cutting edge work on the front lines with those who are finding their way toward recovery, and especially to hear and see evidence of the fact that recovery is possible, that prevention intervention is so promising and that the best thing we can do in our work is to give people hope that they, too, can recover and lead productive lives. Involuntary outpatient treatment may not be the best tool in the toolbox, but it has its role. I am convinced that working together with treatment teams we can make it a better one.

Is There Such a Thing as a Legal Name?

Kip McVay, Senior Judge *alk/a* Kipling Louise McVay-Stubbs

A judge recently posed a question from a constituent whether a woman changing her name upon marriage may use a different name in her profession. It is well to comment that, when a legal question arises, we have thousands of years of a legal heritage that began with the influence on Jewish law by primitive customs, Mesopotamian law, and Egyptian law; which, in turn, along with Minoan and Mycenaean customs, affected Greek law. These then influenced Roman law that, along with Germanic custom and Church law, formed the basis of the English common law, which became the common law in Georgia.

"Is there such a thing as a legal name?" was a rhetorical question posed by Attorney General Arthur K. Bolton, who responded to the Secretary of State's inquiry whether a woman registering to vote was required to use her husband's surname. [See, 1974 Op. Atty. Gen. Ga. 57, Opinion 74-33 (March 15, 1974).] Mr. Bolton found no statutory or common law "on point" in Georgia or other states as to a married woman's name.

Dicta in Fulghum v. Paul, 229 Ga. 463 (1972), involving the change of the name of a minor by the custodial parent to her own surname, states: "It is merely a custom of persons to bear the name of their parents. Hence, in the absence of a statute or judicial adjudication to the contrary, there is nothing in the law prohibiting a person from taking or assuming another name, so long as he does not assume a name for the purpose of defrauding other persons through a mistake of identity (citing) 57 AmJur2d 289, 22; 65 CJS 25, 11 (1). Accordingly, we conclude that no one has a property right in another's name including the parent of a minor child." Likewise, it would be argued that a husband has no

property right in the name of his wife for which reason he, or any other party, may compel her to use it.

Mr. Bolton noted that the matter of names grows out of "custom," and that one's name is based on what is on one's birth certificate. (He did not address persons lacking a birth certificate.) He went on to say that a woman's surname was changed upon marriage to her husband's by custom, not statutory law. Further, he wrote that a woman could change her name back to her maiden name, and he pointed out the simplicity of the Georgia statute for name changes.



Confusion resulted. The implication was that a court proceeding was required to return to one's maiden name. This conflicted with the fact that others changed their names based on usage, not court decrees.

Over a year later, Mr. Bolton revisited the issue. [See, 1975 Op. Atty. Gen. Ga. 98, Opinion 75-49 (June 3, 1975).] In an opinion to the Commissioner of the Department of Public Safety concerning whether a woman must use her husband's surname for her driver's license, he clarified that, for a woman to change her name back to her maiden name, she may do so "by consistent usage of another name without resort to judicial proceedings."

For the proposition that a woman may use the name she chooses, he cited as authority the 1823 decision in King v. Inhabitant's of St. Faith's decided by the Court of King's Bench (England). For the proposition that a person may change a legal name without a legal proceeding, he cited the American and English Encyclopedia of Law: "At common law a man may lawfully change his name or by general usage or habit acquire another name than that originally borne by him, and this without the intervention of either the sovereign, the courts, or Parliament . . ." 21 Am. & Eng. Ency. of Law (2nd Ed.), p. 311.

This is not to say that government does not now require us to settle on one provable name for national security, public safety, vital records, and health purposes involving such matters, for example, as birth and death certificates, a passport, social security accounts, driver's licenses, firearms licenses or enlistment in military service.

On the other hand, which name is used for other matters is up to the persons involved and their requirements. The important elements in most business relationships are that the person can be identified and located and that fraud is avoided. We do have a statute that prohibits changing one's name with the intent to commit fraud. (See, O.C.G.A. §19-12-4.)

In the changing of names based on usage, we are now at full circle from our legal origins as far back as Biblical times. A few names so changed are Abram to Abraham, Sarai to Sarah, Esau to Edom, Daniel to (or in addition to) Belteshazzar, Simon to Peter, and Saul to Paul.

It is left to the reader to decide if there is such a thing as a "legal name." We do know that "there is nothing new under the sun." Ecclesiastes 1:9.

Magistrate Council Free Forms Generator And Public Access to the Courts

The Council of Magistrate Court Judges (CMCJ) brainstormed over the last few years about how to improve access to the courts in Georgia. Since the majority of the people using magistrate courts in Georgia are self-represented, and since judges and clerks are prohibited from providing legal advice, citizens either uneducated or uninformed about the magistrate court process are at a disadvantage. Therefore, the Council wanted to provide a tool that would be free for all citizens, business and attorneys to help educate them. It also wanted to provide a consistent and level “playing field” for all parties in court. Georgia prides itself on being a business friendly state but once the business entities arrive, they should be ensured a court process that is easy to understand and consistent throughout all counties.

Three goals were identified as crucial to any project: Consistency; Education and Efficiency. Forms that were uniform provide both consistency and education, and both of those in turn lead to efficiency. Thus, the Council developed a dynamic questionnaire that would guide parties to fill out complaints and answers. General Statement of Claims and Answers, and Dispossessory Statement of Claims and Answers were the four forms that were used first.

The Council partnered with Tyler Technologies to develop the dynamic question process and the end result was to be a complaint or answer that could be printed out and filed with the clerk. However, given the national trend towards e-filing in courts, it was also imperative that any process be compatible with future e-filing needs. Therefore, the Council required Tyler to comport with the e-filing standards set by the Supreme Court Committee on e-filing, which were based on national standards and approved by the Judicial Council.

CMCJ also knew that to have a solid project that would be successful, there would need to be measurement tools built in to the product so that changes could be made if needed. As such, a mandatory set of questions are presented at the end of the process for objective evaluation and pilot courts will be asked to monitor and provide subjective feedback over a short time period. It took over a year to research and develop the goals for the project and interview prospective companies. However, once Tyler was selected, the project was ready to go live in eight months. The Forms Generator went live in mid-August and the CMCJ is the first group to go live in the nation with such a product that is free for all to use.

Hopefully, in the next few years the Council will be able to add forms and supplement the current forms with translation into other languages, as well as make them ADA compliant.

Sharon Reiss
Council of Magistrate Court Judges



Judicial Ethics

My name is Ronnie Joe Lane and I look forward to meeting each of you in person soon (under good conditions, of course). However, I am pleased to be able to introduce myself and cover a few high points.

Several weeks ago I was able to have a fruitful meeting with your executive committee to discuss all of our roles in judicial ethics. Ethics is not a one way street where the JQC is some monster waiting to pounce on your slightest mistake. Every judge should have read and be very familiar with the Code of Judicial Conduct by now and we should all be diligent in following that code and encouraging our fellow judges to follow the code.

I would much rather educate judges than sanction or remove them. If invited, I will attend your educational training. You may contact me at any time to discuss any ethical dilemma so that we may think through the problem together. If you think you have violated the code, you should call to make sure that the integrity of the judiciary can remain intact as much as possible.

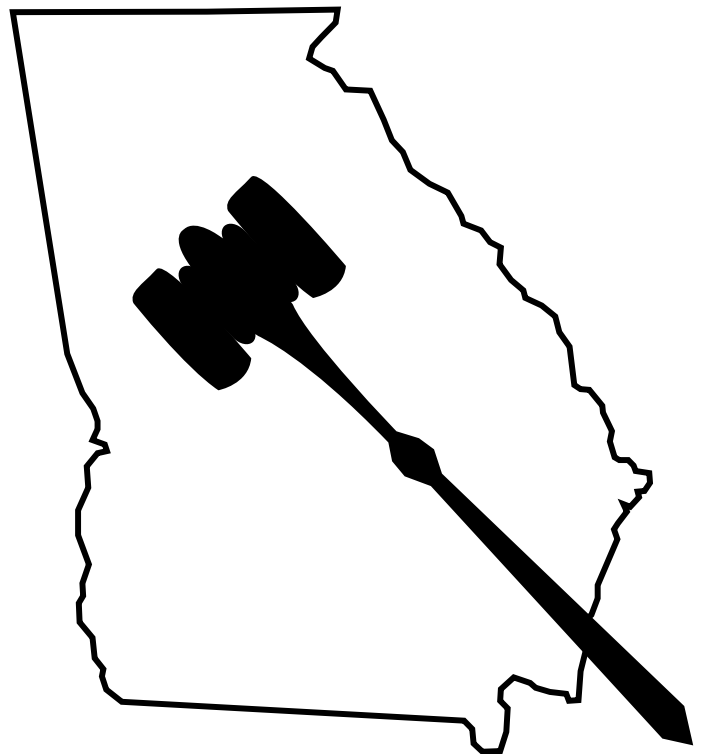
No judge has ever been removed from office in Georgia for making a slight error. However some judges have been, and will continue to be, removed for doing outlandish things that any of you would grimace at upon hearing all of the facts. Every sanction and removal is an embarrassment to our judiciary.

I served as Juvenile Court Judge and then Superior Court Judge for a total of 20 years. I have dealt with almost all of the situations that you will face as a judge. It is not always easy to follow the code but it is always the right thing to do. It is not always easy to choose the harder right over the easier wrong. You will face tremendous pressure sometimes to compromise what you know is the right thing to do. But you owe it to yourself, your family, fellow judges, and most especially the people who daily look to you for justice to follow the law and the Code of Judicial Conduct in all of your dealings.

Feel free to call my cell 229-220-5099 or email me at rjlane1@gmail.com if I can help you.

Other information is on our website www.gajqc.com.

Ronnie Joe Lane, Director
Judicial Qualifications Commission



The End is Near! -Many Judges Will Complete Certification Classes

Judge Keith Wood

In 2010 a small group of probate judges met to reconsider the training needs of our court. This was done, in part, because of the statements of one judge (who was subsequently removed from office) that he was not adequately trained for the rigors of the office of probate judge. While his allegations were ultimately discredited, the fact that they were made was enough to cause the Training Council to take a look at how training for both new judges and current judges could be more effectively done.

From this and subsequent meetings came not only revamped programs for the mentoring and training of new judges, but also the development of the mandatory certification program which is managed by the Carl Vinson Institute of Government.

The goal of the certification program was to provide each probate judge with the foundational information they should have in order to perform their job and run their office. While it was initially met with some grumbling, based on comments I hear now my overall impression is that the program has been a benefit for all probate judges. As time passes and new probate judges come on board, this certification program will become an accepted part of the job requirements and, hopefully, ensure the viability of our court.

So why do I mention all this?

At the end of the summer classes in 2015, there will be a number of judges that will have completed all the required courses and will be eligible for their certificate - and just in time for the 2016 campaign season!

While the completion of the program was exactly what was planned, from a Training Council perspective this raises a simple question: What next?

Here are my thoughts on where we need to be heading in terms of our future training:

First, future training must build on the foundations established in the certification program by more deeply exploring topics that could only be cursorily covered in the classes.

Second, there must be an ongoing emphasis on ethics and professionalism, both inside and outside of the court. The last six years have seen a large number of judges, including a number of our own, who have been removed from office, asked to leave or resigned under a cloud. While training isn't going to correct moral failures, we should never be in a position to have someone say they were never told the rules.

Third, we need to continue our efforts to ensure that all probate judges are aware of any changes in the law that would affect their duties. Even though this is a task made easier by the fact that the information is readily available online, there still needs to be a mechanism to collect and disseminate it to all the probate judges in a timely and understandable manner.

Finally, we need to continue to evaluate the certification program to make sure it meets the needs of our judges and provides a training value. This evaluation process is going to require all probate judges to communicate their thoughts to the Training Council on what works, what doesn't work, and what else needs to be covered. You may think that your comments are never seen but I can assure you they are and have resulted in modifications to the program.

I'll end this by saying a big "Thank You!" to all of the people who have made the certification program a success, including those who helped develop it, coordinated the classes, put together materials, taught the classes and provided input (both positive and negative). I don't have to name names - you know who you are!

Professionalism for Judges: Avoiding Stage IV Robe-itis

Judge Martin L. Cowen III

As a part-time associate probate judge, I retain the privilege of participating in various lawyer forums. Lawyers new to a particular court will commonly seek from forum members “a 411” on a judge with whom they are not familiar. Recently the diagnosis was that the local judge had a serious case of “Stage IV Robe-itis.” This article addresses how we judges might avoid this serious disease. Having practiced law for over 39 years, I have some familiarity with the affliction.

Here are some symptoms of Robe-itis:

- Forgetting that you are no longer a prosecutor
- Tardiness
- Lack of respect for lawyers
- Intolerance of innovation
- Lack of respect for litigants (customers)
- Using power once offended in one domain to inflict consequences in another

Here are some details.

- Forgetting that you are no longer a prosecutor

As a criminal defense lawyer for most of my career, I am very sensitive to this issue. Judges often come to the bench from the prosecutor’s office. Relatively few new judges come from the criminal defense bar. More than one judge, in my experience, has failed to understand that he/she is no longer a prosecutor. Criminal prosecution and criminal defense are both honorable professions and should have equal standing before the court. A prosecutor on the bench is one of the worst experiences for a

criminal defense attorney. We judges need to recall that the prosecutor already has the advantages of general public approbation and support by government funds, resources, and infrastructure. Defense attorneys are often condemned by the public (“How can you represent that person?”) and function without the relatively larger resources of the government. The last thing defense lawyers need is a trial judge/former prosecutor with his/her finger on the scales of justice.

- Tardiness

Trains run on time. Movies begin on time. Employees clock in on time. Court should start on time.

Trains run on time because people have transportation choices and if trains were unreliable, travelers would make other choices. Movies begin on time because people have entertainment choices and if the theatre were unreliable, moviegoers would make other choices. Employees arrive at work on time because people have employment choices and if the employee is unreliable, the employer will make other choices. Too often court does not begin on time and when that happens the customers of unreliable courts cannot make other choices. We judges have monopoly power backed up by governmental force. If a lawyer, litigant, or witness fails to be in court whenever the judge fancies to show up, the judge can fine or imprison him/her.



Chronic and extreme judicial tardiness is an abuse of our authority. We are all late sometimes. Sometimes on purpose we arrive on the bench late in order to allow the parties to talk before the calendar begins. This procedure is common on arraignment days, for instance. Not a problem. The tardiness of which I complain is the judge who keeps defense lawyers, prosecutors, witnesses, probation officers, the clerk and the court reporter waiting, idle, in his/her courtroom, while the judge entertains a visitor in his office or on the telephone for hours after the scheduled time of court. Many of these waiting people are also likely employees of the government, who are being paid for doing nothing except waiting on the unprofessional judge’s whim. I do not exaggerate. I, personally, have been the victim of this abuse, though not myself on the government payroll at the time, and therefore more than a little miffed. I know this currently happens within 30 miles of my writing desk.

Professionalism for Judges cont.

- Lack of respect for lawyers

Lawyers have a very difficult job. The job is mostly thankless. It always amazed me that following a successful outcome in court, the client rarely has words of thanks for his/her lawyer. "After all, thinks the client, I should have won!" Often lawyers are not paid adequately for their work. Often lawyers do not have adequate staff support for their practices. I vividly recall working late into Sunday nights (after a weekend full of legal work) just to keep up with the demands of my private practice.

On the other hand, we judges arrive on weekdays at 8 a.m. and go home at 5 p.m. Most judges do not have to work on week nights or on weekends.

Given the demands of private practice, perhaps we judges might cut our lawyers a little slack when their performance is not idyllic. Most lawyers, when their performance is deficient, will jump through hoops to solve the problem when their attention is called to the matter by the judge. A little understanding and kindness, along with the "rebuke," will go a long way.

- Intolerance of innovation

Most cases in courts are routine. "Been there; done that" is the general rule. Many judges welcome something new in their cases. "New" allows a judge to practice skills (like legal research and analysis) lying dormant because of deadly routine. Recently in our court we had a petition for writ of habeas corpus filed. I am not sure that has ever happened before, certainly not in the memory of anybody here now. We found exhilarating the opportunity to do something new and different. Not

all judges, in my experience, are happy to see "new and different." "New and different" simply means more work to some judges. While the law changes over time, it changes only slowly. In order that the law progress, we judges need to be open to new and innovated arguments from our lawyers. We ought to welcome and encourage innovative lawyering. ("A lawyer should represent a client zealously within the bounds of the law.") Discouraging innovation because it involves more work is a disservice to the progress of the law and is unprofessional judicial conduct.

- Lack of respect for litigants (customers)

As indicated above, rarely do we see something new. "Been there, done that." On the other hand, litigants are often in court for the first time. They are perhaps afraid and certainly anxious. Hopefully, they have positive expectations for the process, set by experiences with television. A litigant expects to see a distinguished professional, attentive to the case, and serious about the claims of all the parties. People want their day in court. People want to experience having been heard. While for judges the process can be boring and tedious, it is never boring for the parties. Their vital interests are at stake. A trial or a hearing is a ritual. The judge is robed and elevated above the courtroom. The language of the participants is scripted and tightly controlled. Everybody is serious. Living through the ritual, litigants have the experience of justice being performed. And it is a necessary performance. This experience is true both for winners and losers in court. Even the losing party can feel, after losing, that he has had his day in court. The judge listened. The judge considered

his arguments. And while the litigant lost, he can go home with a sense of closure, the process having played out. There is, in the best legal proceedings, a catharsis.

- Using power once offended in one domain to inflict consequences in another

All too Human. As people we tend to inflict consequences wherever and whenever we can on others when they smite us. So, if an acquaintance is rude to us at church, we might omit him/her from our Christmas party invitation list.

We judges ought not be "all too human." Judges have a domain of influence. That domain is the case assigned to them. Within the context of that case, we have authority. What happens in the context of the case, should not, generally, cause us to act outside the domain of the case. For example, one of the rare consequences (negative feedback) judges experience are those imposed by higher courts. Nobody likes to be corrected. Judges do not like to be overruled. Should a party appeal our ruling, an "all-too-human" judge might take offense at the questioning of his/her judgment. Should he/she be reversed, the judge might take even more offense. The lawyer who appeals our ruling to a higher court should not be subjected to any consequences by the judge, even indirect consequences, like omitting the lawyer from the Christmas party invitation list.

Conclusion

Plato famously claimed that ladies and gentlemen do not need laws to control their behavior. Likewise a judge who is a lady or a gentleman does not need an essay on professionalism or a lecture on rules. We are fortunate in the South in general and in Georgia in particular

Professionalism for Judges cont.

because ladies and gentlemen on the bench are the norm.

One way to think about judging, from the outside, is that sometimes a person appointed to the bench is “smaller” than his/her office. A “big” person, simply, is a lady or a gentleman. A person is “big” when they are possessed of virtues of character such as courage, moderation, generosity, magnificence, friendliness, magnanimity, toleration, practical judgment, justice and wisdom.

The problem with a “little” person on the bench is that he/she generally knows that the job is bigger than he/she is. The “little” person tries to blow him/herself up to fit the job and that “blowing up” takes the forms of continuing in the role of prosecutor, inappropriate tardiness, lack of respect for lawyers, lack of tolerance for innovation, lack of respect for litigants, and a lack of understanding of the judge’s domain of power (simply the case before him/her).

We are honored and privileged to be judges. Our profession carries with it, above all others, an expectation that we be persons of the highest character.

Thank you, Ladies and Gentlemen, for your consideration.

The Probate Court Rules and Forms Committee Update for 2015

The Probate Court Rules and Forms Committee works diligently to revise and amend the Uniform Probate Court Forms each year, and this year was no exception. In addition to our normal timeline for July 1st amendments, this year a set of forms will take effect January 1, 2015. This is due to the amendment of O.C.G.A § 29-2-4 which now requires that certain relatives of a minor child of the decedent be served prior to the appointment of a Testamentary Guardian. These provisions take effect January 1, 2015. Therefore all Georgia Probate Court Standard Forms (GPCSF) which involve the Probate of Wills required revision.

First, I would like to thank all that Judges for allowing me to serve as chair of this important committee for so many years. I appreciate all the valuable suggestions and feedback from the Judges both inside and outside of the committee. As always your input is not only welcome but vital to having effective, viable forms. I hope that you are all proud of the revised

2015 Georgia Probate Court Standard Forms.

The Probate Court Rules and Forms Committee has determined that the following are the goals of the Georgia Probate Court Standard Forms (GPCSF). First, the GPCSFs should provide access to justice by the public. Second, the GPCSFs should assist the Judges as they address Probate Court matters across the state of Georgia. These goals were approved by the Council of Probate Judges in October 2014.

The Council of Probate Court Judges approved both batches of proposed amendments that will take effect January 2015 and July 2015. The January 1, 2015, revisions are GPCSF 4, Probate in Common Form; GPCSF 5 Probate in Solemn Form; GPCSF 7 Petition to Probate Will in Solemn Form and for Letters of Administration with Will Annexed. In addition, GPCSF Supplement 5 was added. The supplement will be added to the main

Petition when the petitioner is seeking the appointment of a Testamentary Guardian of the decedent’s minor children. How and when to add the Supplement is included in the instructions of GPCSF 5 or 7. GPCSF 4, Common Form contains instructions that Form 4 should not be used when the appointment of the testamentary guardian is necessary due to the service requirement for a testamentary guardian. These forms were also amended to correct code sections and to insure they were consistent with other forms. These forms are expected to be published in the Georgia Advanced Sheets in December 2014.

The following forms will be amended and take effect July 2015: GPCSF 28, Temporary Guardianship; GPCSF 30, Minor Conservatorship; GPCSF 6, Interrogatories; GPCSF 10, Year’s Support; GPCSF 19, Compromised Claims; GPCSF 35, Oaths. In addition GPCSF 32 - Petition for Waiver of Bond and Granting of Powers to a Personal

Probate Court Rules cont.

Representative will also be amended to fix an error. Some of the amendments include the proper spacing for pages that are recorded in the Superior Courts Deeds and records, consistency with like forms, clear and direct wording. In addition Forms GPCSF 5 and 7 will also be republished in the advanced sheets in July 2015 to add a sentence regarding the use of Supplement 1.

In order to allow efficient amendment of the forms in the future the committee has decided to break out some parts of the forms into supplements. This will allow the part that requires an amendment to be revised without

changing the entire form. This will also allow petitioners to print and complete only those portions of the form that is applicable to the facts and circumstances of their particular case. Please note that as forms are amended in the future these pages will be removed from the individual form. The pages that will now be supplements are: Supplement 1, Guardian Ad Litem Appointment; Supplement 2, Appointment of a Process Server; Supplement 3, Certificate of Service; Supplement 5 Testamentary Guardian, which took effect January 1, 2015; Supplement 6, Amendment; Supplement 7, Voluntary Dismissal.

The following is a proposed amendment list by the Probate Court Rules and Forms Committee for 2016: GPCSF 65, Restore Rights of an Incapacitated Adult; GPCSF 12, Perm Guardianship; GPCSF 11, Emergency Guardianship; GPCSF 36 - Medical Consent Guardian; GPCSF Supplement 4 - consent for electronic service. This will allow sufficient time to make sure that all necessary changes are included.

Pam Ferguson
Clayton County Probate Judge
Chair of the Rules and Forms
Committee



Clayton County Courthouse

PETITION TO PROBATE WILL IN COMMON FORM

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when filing a Petition to Probate Will in Common Form pursuant to O.C.G.A. §53-5-15 et seq.
2. An Order for Probate of a Will in Common Form may be granted without service to any one, unless required by the Court. The Court may refuse to grant a Petition to Probate a Will in Common Form. (Henderson v. McVay, 269 Ga. 7 (1998).)
3. According to O.C.G.A. §53-5-19, a Probate in Common Form is not conclusive on all parties until four years from the time of probate (or if minors, four years after said minor reaches the age of majority).
4. As set out in O.C.G.A. §53-5-16 (b) "...probate of a will in common form does not protect the executor in any acts beyond the executor's normal duties of collecting and preserving assets..."
5. This form should not be used in connection with a petition to probate a copy of a will in lieu of a lost original without checking with the Court in which the Petition will be filed.
6. This form should not be used to file a combination petition to probate will and for letters of administration with the will annexed (see Petition to Probate Will in Solemn Form and For Letters of Administration with Will Annexed, GPCSF 7).
7. Paragraph 4 requires sufficient factual information for the Court to conclude that those listed in Paragraph 3 include each and every heir of the decedent and that there are not additional heirs of the same or closer degree according to O.C.G.A. §53-2-1. These facts must allow the Court to rule out the possibility that there may be other heirs of similar or closer degree who have not been listed. Provide the date of death of any deceased heirs and the name of the Personal Representative if applicable. The Personal Representative of a deceased heir is authorized to consent on behalf of that heir. O.C.G.A. §53-6-30. NOTE: If you are uncertain how to determine the heirs of a decedent, refer to the "Heirs Determination Worksheet" available from the Probate Court or at www.gaprobate.org. Examples of such statements would be:
(a) "decedent was or was not married at the time of his death and had no children born, adopted, living or deceased, other than listed herein;" (b) "decedent had no other siblings half or whole other than those listed herein;" (c) "the decedent's brother who died previously, had no other children born, adopted, living or deceased, other than listed herein."
8. This form should not be used if the Petitioner is seeking the appointment of a Testamentary Guardian in Paragraph 6, which requires notice to the relatives of the decedent's minor child(ren) pursuant to O.C.G.A. §29-2-4.
9. According to Uniform Probate Court Rule 5.6 (A), unless the Court specifically assumes the responsibility, it is the responsibility of the moving party to prepare the proper citation and deliver it properly so it can be served according to law. The documents after the notice pursuant to Uniform Probate Court Rule 5.6 (A) are to be completed by the moving party, unless otherwise directed by the Court.

II. General Instructions

General instructions applicable to all Georgia Probate Court Standard Forms are available in each probate court, labeled GPCSF I. This information can also be obtained at www.gaprobate.org/forms.php.

PETITION TO PROBATE WILL IN SOLEMN FORM

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when filing a Petition to Probate Will in Solemn Form pursuant to O.C.G.A. §53-5-20 et seq.
2. It is permissible, but not mandatory, to use this form in connection with a petition to probate a copy of a will in lieu of a lost original pursuant to O.C.G.A. §53-4-46, provided that appropriate interlineations are made, and additional information is given to overcome the presumption of revocation.
3. Signatures of heirs who acknowledge service must be sworn to before a notary public or the clerk of any probate court of this state. It is not necessary that all acknowledgments appear on the same page. An attorney at law may acknowledge service on behalf of an heir; however, the attorney must certify that he or she currently represents that heir with regard to the pending matter and, in order to comply with O.C.G.A. §53-11-6, the attorney's signature must be sworn to as provided above. With respect to a power of attorney, the attorney-in-fact may acknowledge service on behalf of the donor of the power, provided that the power of attorney grants such authority, the signature of the attorney-in-fact is attested, a copy of the power of attorney is attached, and the attorney-in-fact certifies that the copy is a true copy and is still in effect.
4. O.C.G.A. §53-11-2 provides that a party to a probate proceeding who is not sui juris must be represented by a guardian provided that the Court may appoint a guardian ad litem or determine that the natural guardian, guardian, conservator, or testamentary guardian has no conflict and may serve.
5. O.C.G.A. §53-5-22(c) provides that service of notice, when made personally or by mail, shall include a copy of the Petition and of the Will (and Codicil(s)) for which probate is sought. The same is true when service is acknowledged. This form may, but is not required to, be used where service by registered or certified mail with return receipt requested, restricted delivery, is requested by the Petitioner in lieu of personal service, in accordance with O.C.G.A. §53-11-3(e). Make appropriate changes in the order for notice, notice and certificate of service. If Petitioner requests personal service by registered, certified, or statutory overnight delivery with return receipt requested and with delivery restricted to the addressee only and that service is unsuccessful, service must be made pursuant to O.C.G.A. §53-11-3(a).
6. Paragraph 4 requires sufficient factual information for the Court to conclude that those listed in paragraph 3 include each and every heir of the decedent and that there are not additional heirs of the same or closer degree according to O.C.G.A. §53-2-1. These facts must allow the Court to rule out the possibility that there may be other heirs of similar or closer degree who have not been listed. Provide the date of death of any deceased heirs and the name of the Personal Representative if applicable. The Personal Representative of a deceased heir is authorized to consent on behalf of that heir. O.C.G.A. §53-7-1. NOTE: If you are uncertain how to determine the heirs of a decedent, refer to the "Heirs Determination Worksheet" available from the Probate Court or at www.gaprobate.org.

Examples of such statements would be: (a) "decedent was or was not married at the time of his death and had no children born, adopted, living or deceased, other than listed herein;" (b) "decedent had no other siblings half or whole other than those listed herein;" (c) "the decedent's brother who died previously, had no other children born, adopted, living or deceased, other than listed herein."

7. Paragraph 6. In the event there is a Testamentary Guardian/Conservator named in the Will and the decedent died leaving minor children, then the consent to serve should be completed according to O.C.G.A. §29-2-4 and/or §29-3-5. When a testamentary Guardian is to be appointed, Supplement 5 (Testamentary Guardianship) should be included with this Petition and the Petitioner must provide full names and addresses for the minor children's adult siblings and grandparents. If there

are no living adult siblings or grandparents, the Petitioner must provide full names and addresses for the minor children's great-grandparents, aunts, uncles, great-aunts, or great-uncles, if any such relatives exist. If the minor children shared the same parents, the Petitioner may complete one Supplement 5 for such similarly situated children. If the minor children did not share the same parents, a separate Supplement 5 must be filed for each minor.

8. According to Uniform Probate Court Rule 5.6 (A), unless the Court specifically assumes the responsibility, it is the responsibility of the moving party to prepare the proper citation and deliver it properly so it can be served according to law. The documents after the notice in regards to Uniform Probate Court Rule 5.6 (A) are to be completed by the moving party, unless otherwise directed by the Court.

II. General Instructions

General instructions applicable to all Georgia Probate Court Standard Forms are available in each probate court, labeled GPCSF 1. This information can also be obtained at www.gaprobate.org/forms.php.

PETITION TO PROBATE WILL IN SOLEMN FORM AND FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when filing a combined Petition to Probate Will in Solemn Form pursuant to O.C.G.A. §53-5-20 et seq., and for Letters of Administration with the Will Annexed pursuant to O.C.G.A. §53-6-13 et seq.
2. It is permissible, but not mandatory, to use this form in connection with a petition to probate a copy of a will in lieu of a lost original pursuant to O.C.G.A. §53-4-46, provided that appropriate interlineations are made, and additional information is given to overcome the presumption of revocation.
3. Signatures of heirs and beneficiaries who acknowledge service must be sworn to before a notary public or the clerk of any probate court of this state. An attorney at law may acknowledge service on behalf of an heir or beneficiary; however, the attorney must certify that he or she currently represents that heir or beneficiary with regard to the pending matter and, in order to comply with O.C.G.A. §53-11-6, the attorney's signature must be sworn as provided above. It is not necessary that all acknowledgements appear on the same page.
4. O.C.G.A. §53-11-2 provides that a party to a probate proceeding who is not sui juris must be represented by a guardian provided that the Court may appoint a guardian ad litem or determine that the natural guardian, guardian, conservator, or testamentary guardian has no conflict and may serve.
5. O.C.G.A. §53-5-22 (c) provides that service of notice, when made personally or by mail, shall include a copy of the Petition and of the Will for which probate is sought. The same is true when service is acknowledged. This form may, but is not required to, be used where service by registered or certified mail with return receipt requested, restricted delivery, is requested by the Petitioner in lieu of personal service, in accordance with O.C.G.A. §53-11-3(e). Make appropriate changes in the order for notice, notice, and certificate of service. If Petitioner requests personal service by registered, certified, or statutory overnight delivery with return receipt requested and with delivery restricted to the addressee only and that service is unsuccessful, pursuant to O.C.G.A. §53-11-3(e) service must be made pursuant to O.C.G.A. §53-11-3(a).

Petition to Probate Will cont.

6. Paragraph 4 requires sufficient factual information for the Court to conclude that those listed in paragraph 3 include each and every heir of the decedent and that there are not additional heirs of the same or closer degree according to O.C.G.A. §53-2-1. These facts must allow the Court to rule out the possibility that there may be other heirs of similar or closer degree who have not been listed. Provide the date of death of any deceased heirs and the name of the Personal Representative if applicable. The Personal Representative of a deceased heir is authorized to consent on behalf of that heir. O.C.G.A. §53-7-1. NOTE: If you are uncertain how to determine the heirs of a decedent, refer to the "Heirs Determination Worksheet" available from the Probate Court or at www.gaprobate.org. Examples of such statements would be: (a) "decedent was or was not married at the time of his death and had no children born, adopted, living or deceased, other than listed herein;" (b) "decedent had no other siblings half or whole other than those listed herein;" (c) "the decedent's brother who died previously, had no other children born, adopted, living or deceased, other than listed herein."
7. Paragraph 9. In the event there is a Testamentary Guardian/Conservator named in the Will and the decedent died leaving minor children, then the consent to serve should be completed according to O.C.G.A. §29-2-4 and/or §29-3-5. When a Testamentary Guardian is to be appointed, Supplement 5 (Testamentary Guardianship) should be included with this Petition, and the Petitioner must provide full names and addresses for the minor children's adult siblings and grandparents. If there are no living adult siblings or grandparents, the Petitioner must provide full names and addresses for the minor children's great-grandparents, aunts, uncles, great-aunts, or great-uncles, if any such relatives exist. If the minor children shared the same parents, the Petitioner may complete one Supplement 5 for such similarly situated children. If the minor children did not share the same parents, a separate Supplement 5 must be filed for each minor. Contact the Probate Court in which the Petition will be filed for its policy as to the filing of Supplement 5 when there are multiple children.
8. According to Uniform Probate Court Rule 5.6 (A), unless the Court specifically assumes the responsibility, it is the responsibility of the moving party to prepare the proper citation and deliver it properly so it can be served according to law. All pages after the notice in regards to Uniform Probate Court Rule 5.6 (A) are to be completed by the moving party, unless otherwise directed by the Court.

II. General Instructions

General instructions applicable to all Georgia Probate Court Standard Forms are available in each probate court, labeled GPCSF I. This information can also be obtained at www.gaprobate.org/forms.php.

PETITION FOR LETTERS OF TESTAMENTARY GUARDIANSHIP

Supplement 5

(To be used when seeking appointment of a Testamentary Guardian)

INSTRUCTIONS

I. Specific Instructions

This form should only be used when filing either Form 5 (Petition to Probate Will in Solemn Form pursuant to O.C.G.A. §53-5-20 et seq.) or Form 7 (Petition to Probate Will in Solemn Form and for Letters of Administration with the Will Annexed pursuant to O.C.G.A. §53-6-13 et seq.) Please review the instructions for the applicable form when completing this Supplement.

II. General Instructions

General instructions applicable to all Georgia Probate Court Standard Forms are available in each probate court, labeled GPCSF I. This information can also be obtained at www.gaprobate.org/forms.php.

Training Council Doings and Going-Ons

Judge Keith Wood

District Training Opportunities

District Directors are reminded that a Mandatory Continuing Judicial Education (MCJE) hour can be earned for a training program offered at District meetings. These programs could range from bringing in someone with specialized knowledge to having a round table-type discussion of cases. The important point is that the activity should promote a better understanding of the legal issues that face probate judges. To qualify for the training credit, the training materials, including any legal issues discussed and relevant citations to law, should be submitted to the Institute of Continuing Judicial Education (ICJE), along with a list of attendees.

Election of Training Council Representatives

If you are the District Director in an odd-numbered district, don't forget that you need to elect a representative to the Training Council to begin serving in March 2015. Judges that are currently serving on the Training Council can be re-elected.

Schedule for Training in 2015

The Spring Conference will take place March 23-26 in Athens at the Georgia Center. March 23 will be committee meetings and the training will begin on March 24 and continue through noon on March 26. In case you're interested in such things, Mercer plays Georgia on the 24th at Foley Field.

For the first time in a few years, Traffic Judge Training will take place separately from the Spring Conference. The dates for the training are May 28-29 at the Lake Lanier Islands.

The dates for Clerks' Training and for the Summer certification courses offered through the Carl Vinson Institute will be announced at a later date.

COAG will take place October 5-9 in Savannah

Certification Program Through Carl Vinson Institute of Government

2015 will be the fourth year (and for many, the last year) of the Certification Program through the Carl Vinson Institute of Government. As you know, this is a MANDATORY program for judges and full-time associate judges. While it can be

completed in four years, each judge is allowed five years to take and pass all courses. While hardship exceptions may be made, failure to complete the program within the five-year period may result in the matter being referred to the JQC.

At the recent Training Council meeting held in Savannah, the Training Council discussed this program and its importance is providing Probate Judges with the core knowledge they need to perform their job. Based on those discussions, the Training Council approved a testing policy which provides that, if a judge does not successfully pass a test at the conclusion of the day's training, they will have the opportunity for two (2) re-tests. Failure to pass the initial test and the two re-tests will result in that judge having to retake the class.

Topics for Clerks' Training

Is there one particular topic that your clerks ask you about constantly? That may mean they need additional training and now is the chance to put in a request. We anticipate six clerk training sessions this summer, three on probate topics and three on traffic topics. In order to make that training meaningful, we need to address the issues that clerks face daily. So, please check with them on topics they want training on and let me know. While we can't cover every topic, we can address the ones that are most pressing.

New Chief Clerks

Chief Clerks appointed to fill unexpired terms:

Monroe County - Donna Robins
Hancock County - Sabrina Lamar

Teachers Wanted!

We always need judges to assist with the training for clerks. By "assisting" I mean putting together the materials and/or teaching the class. If you are interested, please let me know so I can add you to the list to be called on!

Contact Judge Keith Wood at
Cherokee County Probate Court
90 North Street, Suite 340
Canton, GA 30114
(678) 493-6160
bkwood@cherokeeega.com

In Our Prayers

Judge Nancy Aspinwall of Liberty County Probate Court lost her brother Joseph (“Joe”) Craig Kitchings, Sr., 63, on December 31, 2014, at Memorial Hospital in Savannah, Georgia, following a hard fought battle with cancer.

Joe Kitchens spent his childhood in Hinesville. He became an Eagle Scout in 1967 at the age of 16, as well as being named as a member of the Mensa Society. A graduate of Bradwell Institute, he received his degree in Business from Georgia Southern College, then his Juris Doctorate from the Atlanta Law School. He passed the bar in 1976, and began his legal career as a criminal defense attorney with the Atlantic Judicial Circuit Public Defender’s Office in Pembroke. Later, he opened his solo legal practice in Hinesville. In 1998, he became legal partners with his friend and longtime mentor, Richard D. Phillips until Phillip’s death in 2010. He continued as a managing partner of Phillips & Kitchings until he became ill in July of 2014. His mantras were “waste not want not” and “Go big OR Go home”!

He is survived by his four children: Melissa Blackwell (Vance) of Live Oak, FL, Carrie Bryant (Aaron) of Travelers Rest, SC, Joseph “Craig” Kitchings, Jr. (Jenny), of Columbia, SC, and Billie Rae King (Jimmy) of Athens, Ga; grandchildren, Caleb (13), Dylan (10), Logan (9), Eli (7), Harrison (4), Julia Anne (2), Ethan (2), and Lucy Claire (6 months); brother, Billy Kitchings (Mary) of Hinesville; sisters, Sylvia Spears of Richmond Hill, and Nancy Aspinwall of Hinesville; eight nieces and nephews, numerous great-nieces and -nephews; and long-time companion, Loretta Blanco of Hinesville.

Clerk Jeanie Smith Hooks of Emanuel County Probate Court lost her father Mr. Crantford Eugene Smith, Sr., 79, on October 16, 2014 at the Northeast Georgia Medical Center in Gainesville following a brief illness. She lost her mother Mrs. Jo Ann Lumley shortly thereafter on November 29, 2014 at the Emanuel Medical Center in Swainsboro following an extended illness.

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